IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11039 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ROHITKUMAR SHAH

Versus

STATE OF GUJARAT

Appearance:

MR AM RAVAL for Petitioner

MS NIDHI B JANI for Respondent No. 2

MR AD OZA Government Pleader for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/12/2000

ORAL JUDGEMENT

Rule. Learned advocate Ms. Nidhi B. Jani waives service of rule on behalf respondent No.2 and learned Government Pleader Mr. A.D.Oza waives service of rule on behalf the respondent-State.

2. The petitioner is a natural guardian and father of Jigar Shah, who passed his 12th standard examination conducted by Gujarat Secondary Education Board, Gandhinagar, in March, 2000. When the result declared, the petitioner secured 72.83 marks in general stream (commerce) and, therefore, he applied for re-checking and by way of re-checking 9 marks added in English subject. Therefore, according to the petitioner his son has obtained total 74.33 % marks in 12th standard in General stream (commerce). The result of re-checking along with corrected mark sheet was communicated to the petitioner on 5th July, 2000. According to the petitioner, admission process of B.C.A. was over on 16-6-2000 whereas he received result of re-checking on 5-7-2000 and, therefore, he made a written representation to the Registrar, Gujarat University on 3rd August, 2000, but the same has not been considered by the University. Therefore, the petitioner filed this petition on 16-10-2000 and it came up for hearing on 18-10-2000 before the Court (Coram : P.K.Sarkar, J.), but learned advocate for the petitioner could not remain present on 18-10-2000 and the matter was adjourned to 15-11-2000 and on 15-11-2000 the Court (Coram : P.K.Sarkar, J.) passed the following order.

> "Heard learned counsel Mr. Raval for the petitioner. Issue notice on the respondents. Petitioner to take steps for service of notice on respondents immediately. Notice returnable on 8-11-2000.
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> I have also heard on interim prayer. Issue notice. Interim relief will be decided on the returnable date. It is submitted that admission in B.C.A. is over and now some vacant seats are being filled up. In the event of filing up said vacant seats, the respondents should fill the same strictly in order of merit and in that event the case of the petitioner may be considered on the basis of merit. D.S. permitted. "

3. The respondent-University has also filed affidavit on 15-11-2000 wherein in paragraph 5.1 it is stated that process to the BCA Course conducted by Gujarat University for the year 2000-2001 commenced on 13th June 2000 and the said process was completed on 16th June 2000. It is further contended by the respondent-university that admissions were granted to 1097 students on free and payment seats and the last

student who has been granted admission had obtained 74 % marks. It is further contended by the University that the academic term had commenced on 13th June, 2000 and concluded on 12th November,2000 and thus according to the University the first academic term has already completed and, therefore, no student can be admitted after the completion of an academic term directly into the second semester without studying in first semester.

4. On the other hand, learned advocate for the petitioner has mainly contended that the present petitioner who has previously secured 72.83 % marks in General stream (Commerce) but later on after re-checking, the Board has added 9 marks in English subject, and therefore, as per the corrected mark sheet the son of the petitioner has secured 74.33 % marks in 12th standard. Learned advocate for the petitioner has relied upon a decision reported in 1998 (2) G.L.R. 973 Aditi Surendra Modi v B.J. Medical College & Ors. and argued that the point which has been raised by the petitioner is covered by the aforesaid judgment and, therefore, direction is required to be given to the University to give admission to the petitioner. I have gone through the aforesaid judgment. In that case the petitioner-Aditi had secured admission in Medical College, Vadodara and in re-checking her marks were increased to 406 and, therefore, subsequently she requested the authority to give her admission in B.J.Medical College, Ahmedabad, on merits for the remaining term. But the authority of B.J.Medical College had offered that she should be treated as new entrant in the said College, and therefore, she had filed writ petition wherein the Court held that " If she was given correct and proper marks at the time of declaration of the result of her H.S.C. examination, then in the natural course, she would have secured admission in the B.J.Medical College on merits.". But the facts of the present case are quite different then the case of the aforesaid judgment because in that case the petitioner has already secured admission in Medical College, Vadodara, and she was studying there. Keeping in mind above aspect of the matter, the Court directed directed the authority to give her admission in 2nd M.B.B.S. Course because she had already studied at Medical College, Vadodara in first M.B.B.S.. But here in this case the petitioner has not secured admission anywhere and, therefore, when she has not studied in first semester, she cannot get admission directly into second semester. Therefore, the aforesaid judgment will not be helpful to the petitioner. Over and above, in the affidavit filed by the University, it is contended by the

University in paragraph 5.3 that first academic term had commenced on 13th June, 2000 and concluded on 12th November, 2000 and thus the first academic term has already completed and no student can be admitted after the completion of an academic term. So, if this Court will given any direction in favour of the petitioner, then also he will not be in a position to study in first semester because the first semester is already completed and, therefore, in any circumstances of the matter, order cannot be passed directing the University to give admission to the petitioner directly in second semester though he has not studied in first semester. It is true that if the Board corrected the result in time or assessed the things at appropriate time, then the petitioner would have got admission into any college of his choice. The fact remains that the petitioner could not get admission because the Board has not assessed the papers in time, but only on that basis the petitioner is not entitled to get admission directly in second semester and no such direction can be issued. There is no facility available into the college or it has not been argued by learned advocate for the petitioner that there is a special provision into the college that during the second semester facility will be available to the student to study in first semester. In these circumstances, the petitioner was entitled to get admission but because of the delay on part of the Board in re-checking and reassessing the papers he could not get admission as per his choice, but only on that basis, no direction can be issued to the University to give admission to the petitioner directly in the second semester.

4. Learned advocate for the petitioner has drawn my attention towards Article 21 of the Constitution of India. There cannot be any dispute regarding the rights of education, but the fact remains that the petitioner wants admission directly in second semester without studying in first semester and, therefore, benefit of Article 21 will not come in rescue of the petitioner.

5. In view of the discussion as aforesaid, the petition stands dismissed. Rule discharged. Interim relief if any stands vacated.

(R.P.Dholakia, J.)

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